IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3245 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUNILKUMAR GURUMUKHDAS CHAVALANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3245 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/08/2003

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner

has challenged the order of detention dated 12-3-2003 passed by the District Magistrate, Vadodara, in exercise of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Heard learned counsel for the respective parties. Learned AGP, Mr.R.C.Kodekar, tenders affidavits affirmed on behalf of the respondent Nos.1 and 2 while learned Additional Central Government Standing Counsel for respondent No.4, Ms.Davawala, tenders affidavit affirmed on behalf of Union of India. The same are ordered to be taken on record.

3. Learned advocate for the petitioner has mainly argued that while passing the order, the detaining authority has relied upon the previous order of detention passed by the authority on 21-1-1997 and it is one of the grounds of passing the detention order. Drawing my attention towards the order which is annexed as Annexure-B, he has argued that it is a settled law that previous order which has been quashed and set aside by the High Court cannot be relied upon by the authority in passing another order of detention. In this connection he has drawn my attention towards the case of Ramesh Vs. State of Gujarat and Others, reported in AIR 1989 S.C. page 1881 more particularly towards head note (A) which reads as under:

> "(A) Gujarat Prevention of Anti-Social Activities ACt (1985), S.3(2)--Detention--Successive orders--Detaining authority taking into consideration two criminal case against accused mentioned in earlier order of detention--Earlier order of detention quashed--It cannot be said that said cases were mentioned in later order only for limited purpose of showing antecedents of detenu--Later order would also be liable to be quashed."

It is submitted that since the detaining authority has relied upon the earlier detention order passed against the detenu which was already quashed and set aside by the High Court and also since copy of the said judgment was not provided with the grounds of detention, the detenu has requested for a copy. It is further submitted that same was not provided to the detenue and, therefore, it is prayed that impugned order requires to be quashed and set aside. In this connection, he has relied upon the case of Kirit Kumar Chamanlal Kundaliya Vs. Union of India and Others, AIR 1981 S.C. 1621 more particularly

para 12 which reads as under:

"Whether the documents concerned are referred to, relied upon or taken into consideration by the Detaining Authority, they have to be supplied to the detenu as part of the grounds so as to enable the detenu to make an effective representative immediately on receiving the grounds of detention. Where it is not done, the detention would be void."

4. Careful scrutiny of the grounds of detention makes it clear that the detaining authority has relied upon the earlier detention order which was already quashed and set aside by the High Court. It is also borne out from the arguments of the learned counsel for the petitioner that the detenu was not supplied with copy of the judgment delivered by the High Court quashing and setting aside the earlier detention order along with the grounds of detention. Hence, in view of the aforesaid judgments relied upon by the learned counsel for the petitioner, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 12-3-2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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